

CRR 1107 of 2019

In the matter of : Laltu Saha

.....Petitioner

Mr. Uday Sankar Chattopadhyay
Ms. Trisha Rakshit ...for the petitioner

Mr. Avik Ghatak
Mr. Saibal Krishna Dasgupta ...for the O.P. no. 2

Mr. S.G. Mukherjee, Ld. PP
Mr. Imran Ali
Ms. Debjani Sahu ...for the State

The Petitioner has preferred this application under Section 482 of the Code of Criminal Procedure for quashing of the impugned proceeding being G.R. case no. 1443 of 2018 arising out of Asansol Women Police Station Case no. 59 of 2018 dated 23.7.2018 under Section 376/417 of the Indian Penal Code pending before the learned Chief Judicial Magistrate, Paschim Bardhaman.

The learned advocate appearing for the petitioner submits that opposite party no. 2 herein, lodged a complaint against the present petitioner, Laltu Saha and others alleging inter alia that the parents of the opposite party no. 2 were searching for a suitable groom for her and her parents came to contact with one well-wisher who informed about the present petitioner and subsequently, the accused/petitioner visited the house of the opposite party no. 2 and finalized the date of marriage ceremony on 29.6.2018. Soon after the fixation of the marriage, accused no.

1 namely, Laltu Saha started to communicate with the opposite party no. 2 over telephone on regular basis. Thereafter, one day, the petitioner came to the house of opposite party no. 2 and stated that he had come to Asansol for some personal work. On 21.05.2018 again the said accused visited the house of opposite party no. 2 and asked her to go for shopping with him at Bardhaman Bazar and accordingly, the opposite party no. 2 had gone with the present petitioner who booked a hotel room in Bardhaman Inn for refreshment but after some time, he tried to come physically close to the opposite party no. 2 but she protested. The accused person established sexual relationship with opposite party no. 2 against her will and accused person also requested not to disclose the same to anyone. Suddenly, on 21.6.2018, mother of the accused person along with the others came to the house of opposite party no. 2 and denied to give marriage of her son with the opposite party no. 2. On 6.7.2018, accused forced the father of the opposite party no. 2 to sign on a stamp paper in absence of the opposite party no. 2 and thereafter, the parents of the opposite party no. 2 went to the house of the accused person and requested for the marriage but they denied to give marriage of the petitioner with the present opposite party no. 2 and forcefully tried to put signature of the opposite party no. 2 on a declaration that the marriage has been broken and that they will not lodge any complain to that effect but when the opposite party no. 2 refused to put signature on the declaration, the accused persons, dragged her inside a room and ordered the petitioner to commit rape upon her and accordingly she was raped again.

Learned advocate for the petitioner submits that after completion of the investigation, the police submitted charge sheet on 01.11.2018 under Section 376/417 of the Indian Penal Code. It is submitted on behalf of the petitioner that in her statement under Section 161 of the Code of Criminal Procedure that she and the present petitioner cohabited four times in different places but she has stated about two incidents in written complain which allegedly took place on 21.5.2018 and 7.7.2018 but she has not yet disclosed the date and place of occurrence of other two incidents of physical relationship.

He further submits that the written complain was lodged on 23.7.2018 that is after expiry of sixteen days of the last alleged incident and she has not explained the cause of delay in lodging the First information report. He also submits that the Opposite party no. 2 is a major and educated lady and she consented to the sexual intercourse as the petitioner had allegedly promised to marry her. The prosecutrix also admitted that she has sexual intercourse with the petitioner about four times and as the parents of the petitioner did not agree to give marriage to their son with her, she lodged the complain with the police on 23.07.2018.

Referring section 90 of the Indian Penal Code, learned advocate for the petitioner submits that here consent given by Opposite party no. 2 to sexual intercourse with the petitioner with whom she is deeply in love. Therefore the consent cannot be said to have given by the opposite party no. 2 under misconception of fact. This is also because she was aware of the fact that the relationship started from a negotiation between two families and

the said marriage may not be executed in future. She had sufficient intelligence to understand the significance and moral quality of the act of sexual intercourse, she was consenting to. In this context petitioner also referred a judgment of the Supreme Court in ***Uday Vs. State of Karnataka*** reported in **2003 SCC (Cri) 775** which according to him squarely applicable in the instant case.

He finally submits that the complaint has been made for oblique motive and with a view to harass the petitioner as first information report does not disclose the commission of offence and the proceeding has been initiated maliciously with an ulterior motive for wrecking vengeance on the present petitioner and with a view to spite the petitioner and his family members due to private and personal grudge. Accordingly the petitioner prayed for quashing the entire proceeding.

Learned advocate for the opposite party no. 2 Mr. Ghatak submits that in the first information report it has been clearly mentioned that on two occasions, the accused no. 1 has forcefully committed rape upon the opposite party no. 2 and this also corroborates from the medical report. Moreover, during investigation prima facie case has been well established against the present petitioner and as such it would not be proper to quash the entire proceeding at its threshold when the investigation has already been ended in charge sheet and the matter is pending for trial.

Learned advocate for the State Ms. Debjani Sahu submits that the materials available so far in the case diary which are collected during investigation, which includes statement under

Section 161 and 164 of the Code of Criminal procedure and also medical report and other documents, prima facie discloses offences against the petitioner and as such in a proceeding under Section 482 of the Code of Criminal, the court is not supposed to scan evidence in order to judge whether there is a chance of conviction or not.

Having considered the facts and circumstances of the case and materials available in the case diary, it appears that the first information report prima facie discloses offence against the accused no. 1/petitioner. Furthermore, during investigation, it transpires that the statement of the victim/ opposite party no. 2 made in the first information report is not apparently contradictory to the statements made by her during investigation under Section 161 and 164 of the Code of Criminal Procedure. The investigation has already been ended in charge-sheet and I am informed that the matter is pending for framing of charge.

The guideline for quashing of a proceeding as laid down in ***State of Haryana Vs. Bhajan Lal***, reported in **AIR 1992 SC 604** is only when the petition of complain does not disclose a prima facie cognizable offence or when the allegations in the petition of complain or the FIR are inherently improbable or absurd, or when the petition of complain or the FIR is *mala fide* one intend to harass the opponent, or when no evidence of legal character is available or when there is legal bar to the entertainability of the application, that a criminal proceeding should be quashed.

In the instant case the allegations in the FIR and other materials collected during investigation clearly constitutes offence against the present petitioner. Whether the allegations are true or

untrue would have to be decided in trial. In exercise power under section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. Settled law is, the jurisdiction under section 482 of Cr.P.C. has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of section 482 of the Cr.P.C. itself. Here there is nothing to show that further continuance of present proceeding will be an abuse of process of the court.

Thus I find that in view of the materials collected so far investigation, this is not a fit case where the inherent power under Section 482 of the Code can be exercised to quash the entire proceeding.

In view of above, the application being CRR 1107 of 2019 is dismissed.

However there shall be no order as to costs.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)